Memorandum

To: Chair and Commissioners **Date:** May 13, 2008

From: JOHN F. BARNA, JR. **File:** Book Item 4.6

Ref: **CMIA and SR 99 Accountability Implementation Plan - Financial Accountability**

ISSUE: Should Staff develop a supplement to the Accountability Implementation Plan for the Corridor Mobility Improvement Account (CMIA) and State Route 99 (SR 99) projects to discuss financial accountability?

RECOMMENDATION: Commission staff recommends that the Commission direct Staff to develop a financial accountability supplement to the CMIA and SR 99 Accountability Implementation Plan to further clarify the Commission's expectations for the administration, documentation, reporting and auditing of the bond funded projects.

BACKGROUND: In its Accountability Implementation Plan, adopted October 2007, the Commission emphasized program and project accountability and its intent to exercise programmatic oversight for the delivery of CMIA and SR 99 projects with regard to scope, cost, schedule and benefits consistent with the program objectives and executed project baseline agreements.

Commission staff has received the attached letter from Self-Help Counties Coalition requesting validation of their understanding that VCMIA funds are fixed grants, that they intend to spend these funds first in sequential manner, and that any project savings will be credited to their local tax measure funds. Staff has shared some thought with a small group of stakeholders (members of the Self Help Counties Coalition, Regional Transportation Planning Agencies, and Caltrans) through a draft document for review and comment. Many comments received focused on the stakeholders' expectation that bond funds were to be treated as a "fixed grant". Therefore, instead of seeking reimbursement in proportion to the funding sources agreed upon in the baseline agreement for each component, stakeholders' expectations were communicated that bond funds specified for a component should be spent before the more flexible funds (i.e., sales tax). Additional expectations were communicated that project savings should first be credited to the more flexible funds in lieu of recognizing savings proportionally with the funding ratios established in the baseline project agreement. Other concerns pertained to the need for amendments to the baseline agreements when the component and/or overall project cost agreed upon will be exceeded.

These concerns are not consistent with the Commission's prior actions. In its program adoption, the Commission determined funding levels by identifying the net construction cost of each project and applying a percentage of funding to that net construction amount. The need for amendments is consistent with Government Code Section 8879.50(f). The

Commission, as a condition for allocation of funds, requires the project sponsors to report on the activities and progress made toward implementation of the project. The purpose of this reporting is to ensure that the project is executed in a timely fashion, and is within the scope and budget identified when the decision was made to fund the project. Where project costs are anticipated to exceed the budget, corrective action is required.

Given the complexities of the financial aspects of the bond funded projects, additional guidance is needed to ensure that the Commission's expectations for financial accountability are communicated and documented. Specifically, additional clarification for the Commission's expectations of the following is necessary:

<u>General</u>

- Should the Commission apply the Resolution G-12 and the STIP Rule of 20% into the management of the CMIA/SR 99 baseline agreement?

- Does the Commission consider programmed CMIA/SR 99 funds to be a "fixed grant" or "not to exceed" element of the project's funding plan?

<u>Bond Expenditures</u>

- Should expenditures and reimbursements of CMIA/SR 99 funds be based on actual costs incurred and paid?

- Should bond funds be spent sequentially or proportionally with overall funding for each component as reflected in the approved project baseline agreement? If sequentially, should the bond funds be spent first or last?

<u>Corrective Plans</u>

- Does the Commission expect project sponsors to monitor project scope, schedule and cost on a regular basis and prepare a corrective plan to address potential impacts to the delivery of the approved project that identifies all possible actions available to resolve or mitigate identified risks?

- Does the Commission expect to approve the corrective plan in addition to baseline amendments if the corrective action indicates the need for an amendment? Should the amendments apply to state funds only?

- Should the corrective plans be brought forward to the Commission for action on a quarterly basis in conjunction with the Proposition 1B Quarterly Progress Report?

- Should a local board action or resolution committing the supplemental local or local-federal funding levels be provided to support a corrective plan where cost increases are funded by such sources?

<u>Cost Increases</u>

- Does a CMIA/SR 99 project have priority over other STIP funded projects when addressing requests for increased funding?

- Should project development cost, including right of way support cost, increases be funded from anticipated construction cost savings or savings from future phases?

- How should construction cost increases be addressed if bid savings do not materialize?

Construction Contract Award Savings

- Should construction dollars be reprogrammed to reflect anticipated cost savings due to lower construction unit cost? If so, what is an appropriate milestone to initiate reprogramming?

- Should reprogrammed savings be proportionally credited to all available construction funding sources, including CMIA/SR 99?

- Should construction contract award savings be de-allocated proportionally among all funding sources available for construction, including CMIA/SR 99 funds?

- Should project savings be proportionally credited to the CMIA/SR 99 at project closeout?

- How will accumulated CMIA/SR 99 savings be used? To initiate new projects? To support Corridor System Management Plan related activities?

Upon direction by the Commission, Staff is prepared to document the outcome of today's discussion into a supplement to the Accountability Implementation Plan to present to the Commission for approval at its June meeting.

SELF-HELP COUNTIES COALITION

April 3, 2008

John Barna, Executive Director
California Transportation Commission
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Will Kempton, Director
California Department of Transportation
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RE: CMIA projects – cooperative agreements and proportional spending

Dear Mr. Barna and Mr. Kempton:

The Self-Help Counties Coalition met recently and discussed the development of cooperative agreements between local agencies and the Department for Corridor Mobility Improvement Account (CMIA) projects.

As you are aware, cooperative agreements are required for CMIA projects that also include local fund sources or other State or federal sources. To that end, various local agencies throughout the State have been working with the Department on the appropriate language to use regarding how the specific funding sources associated with each project should be spent.

To date, we have been informed that all funds available to a CMIA project should be spent proportionately. The Coalition appreciates this may seem to be an equitable approach, but we do not believe this approach adequately acknowledges the burden of cost increases or the benefit of cost savings. It also ignores the need to maximize the use of fixed grant funding sources while protecting flexible funds whenever possible.

Using the following sample project to illustrate the issue, you can see how fixed grant funds might be left unspent while more flexible funding sources could end up contributing a greater amount than originally anticipated.

Sample CMIA Project w/Funding Split	Baseline Agreement; Funds Committed	Revised Eng. Est.; Funds Committed	Scenario #1 Low Bid w/Proportional Spending	Scenario #2 Low Bid w/Fixed Funds Spent First
Total Project Cost	$50M	$60M	$55M	$55M
CMIA	$10M	$10M	$9M	$10M
TCRP	$10M	$10M	$9M	$10M
RTIP	$10M	$15M	$14M	$12M
Federal Earmark	$10M	$10M	$9M	$10M
Local sales tax	$10M	$15M	$14M	$13M

The CMIA, TCRP and Federal Earmark are fixed grant amounts. The RTIP is generally flexible, but is not always available for programming when needed. Local sales tax revenues are generally the most flexible source.

As the table shows, if more funding is needed for the project due to a higher than anticipated engineers estimate, the funds will not come from a fixed grant but will be derived from either additional RTIP share or local sales tax revenues. If bids come in low, local agencies will contribute more when funds are reduced proportionately rather than spending the fixed funds first. The risk versus reward is not evenly shared by the funding partners.

The Coalition requests the CTC and Department recognize the risk/reward associated with providing flexible funding sources by supporting the use of fixed grants as the first source of funding on all CMIA projects. We in no way want to leave federal or other fixed funding allocations unused if cost savings are recognized on a project. This understanding should be explicitly described in the cooperative agreement for all CMIA projects.

Thank you for your attention to this matter. The Coalition appreciates your willingness to work with local agencies to ensure scarce transportation dollars are used to the maximum benefit. Should you or your staff wish to discuss this matter further please do not hesitate to contact me at 707-565-5373.

Sincerely,

Suzanne Smith

Suzanne Smith
Chair, Self-Help Counties Coalition

Cc: Andre Boutros, CTC
Ross Chittenden, Caltrans